



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/171961

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 2016, under Wis. Stat., §49.85(4), and Wis. Admin. Code, §§HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit (PACU) to utilize a tax intercept to recover FoodShare benefits (FS), a hearing was held on March 2, 2016, at Madison, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether petitioner is liable for an overpayment issued to her mother.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED].
2. On January 14, 2014, the Wisconsin FS agency notified petitioner's mother at her address in [REDACTED] that she was overpaid \$1,815 in Wisconsin FS for receiving FS in Wisconsin in 2013 while also receiving FS in [REDACTED], claim no. [REDACTED]. The notice was also sent to petitioner at the [REDACTED] address because petitioner was included in her mother's Wisconsin FS household and she was 18 years old during the overpayment period.

3. Dunning notices and a tax intercept notice were sent to petitioner at the [REDACTED] address. No payment arrangement was made by petitioner or her mother.
4. The state intercepted \$1,815 of petitioner's income tax refund in early 2015. Petitioner then filed this appeal.
5. Petitioner has lived in [REDACTED] since she was a child. In 2007 her older sister was named her guardian. Petitioner did not live with her mother in [REDACTED] or Wisconsin in 2013. She did not receive the overpayment, dunning, or tax intercept notices.

DISCUSSION

Wis. Stat., §49.85(2)(a), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, FS, and Medical Assistance. The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at §49.85(3)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

Petitioner showed that during the time period in question she did not live with her mother in Wisconsin or in [REDACTED]. She has lived in [REDACTED] first with her aunt and then with her sister since soon after she was born. It is evident that her mother included petitioner on her FS cases fraudulently. I thus will order that the PACU remove petitioner as a liable party for the overpayment and reimburse to her the money that was intercepted from her taxes. I note that Ms. [REDACTED] notified me after the hearing that she concurs with this determination.

CONCLUSIONS OF LAW

Petitioner is not liable for an FS overpayment issued to her mother because she was not a member of her mother's household during the overpayment period.

THEREFORE, it is

ORDERED

That the matter be remanded to the PACU with instructions to remove petitioner as a liable person on overpayment claim no. [REDACTED], and to take action to reimburse to petitioner money that was intercepted from her as recovery of the overpayment, within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

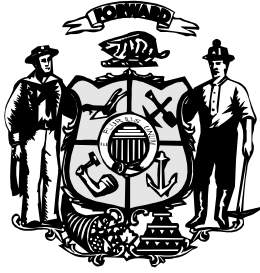
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of March, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 4, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit